

ROBERT LONGTREE, SR.,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 95-43-A
ACTING BILLINGS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	June 19, 1995

This is an appeal from an October 11, 1994, decision of the Acting Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), denying an application for a U.S. direct loan in the amount of \$106,160. Appellant had sought the loan for the purpose of constructing a building to house four businesses--a laundromat, recreation center, snack bar, and gaming center--on the Fort Peck Indian Reservation. For the reasons discussed below, the Board affirm the Area Director's decision.

The Area Director gave three reasons for denying appellant's loan application: (1) Appellant failed to meet the 20 percent equity requirement in 25 CFR 101.3(a); (2) there was a moratorium on the use of Indian Financing Act program funds to finance the kind of gaming operation appellant sought to establish, and appellant's plan to conduct gaming on the same premises as businesses catering to minors would prevent him from obtaining a tribal gaming license; and (3) appellant had a Federal income tax delinquency.

Appellant challenges all three of the Area Director's conclusions. The Board finds that the Area Director's decision may be affirmed on the basis of the third conclusion alone. It therefore addresses only that conclusion.

In connection with his loan application, appellant submitted a form entitled APPLICANT CERTIFICATION-DELINQUENT FEDERAL DEBTS, in which he stated that he was delinquent in paying Federal income taxes owed by Longtree Brothers Construction. On appeal to the Board, appellant acknowledges that these taxes are past due and that he shares liability for them. However, stating that he has worked out a payment plan with the Internal Revenue Service (IRS), he contends that, in light of that plan, the past due taxes are no longer delinquent. Further, he contends that his personal liability for the taxes has been satisfied because, as a 1/4 owner of Longtree Brothers, he was liable for only 1/4 of the taxes, and 1/4 of the past due taxes have now been paid.

The Board must reject both of appellant's contentions. A past due tax is, by definition, delinquent, regardless of the existence of a payment plan. IRS clearly considers the taxes delinquent, as is made clear in its

August 21, 1994, letter concerning the plan: "This confirms your recent agreement to make monthly payments on your delinquent tax liability. \* \* \* [W]e may withdraw your agreement \* \* \* if we believe collection of your delinquent tax is in jeopardy."

Further, because appellant is a general partner in Longtree Brothers, it is unlikely that IRS would consider him relieved of his liability for the delinquent taxes simply because 1/4 of the taxes have been paid. The Board could not accept such an argument without a statement from IRS confirming appellant's release from liability for the taxes.

25 CFR 101.4 provides: "The borrower must sign a statement declaring no delinquency on Federal taxes or other Federal debt." Appellant was unable to comply with this threshold requirement.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's October 11, 1994, decision is affirmed.

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Anita Vogt  
Administrative Judge

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Kathryn A. Lynn  
Chief Administrative Judge